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IN THE

Supreme Court of the United States

October Term, 1973.

No. 73-1696

ANASTASSIOS STAMATAKOS,
Petitioner,

v.

HUNTER SHIPPING COMPANY, S. A.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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HUNTER SHIPPING COMPANY, S. A.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

The petitioner, Anastassios Stamatakos, respectfully prays that a writ of certiorari issue to review the judgment without opinion of the United States Court of Appeals for the Third Circuit entered on January 18, 1974, rehearing denied on February 12, 1974.

OPINIONS BELOW.

The order without opinion of the United States Court of Appeals for the Third Circuit dated January 18, 1974 (A2) has not yet been officially reported. The opinion of the United States District Court for the Eastern District of Pennsylvania dated January 18, 1972 (A9) is not reported.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Should not the Supreme Court grant certiorari to review a Court of Appeals judgment order which is in conflict with the Supreme Court's decision in *Lauritzen v. Larsen*, 352 U. S. 571 (1952)?

2. Should not the Supreme Court grant certiorari to review a Court of Appeals judgment order which is in conflict with the letter and spirit of the treaty between the United States and Liberia?

3. Should not the Supreme Court grant certiorari to determine whether Courts of Appeals are constitutionally required or should be required under the Supreme Court's supervisory powers over the federal court system to give prior public notice of standards and criteria used by the Courts of Appeals when they affirm a judgment without written opinion?

CONSTITUTIONAL, TREATY AND CODE PROVISIONS INVOLVED.

1. United States Constitution, Article VI, § 2:

"This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

2. United States Constitution, Fifth Amendment, due process clause:

"ARTICLE 5

No person shall . . . be deprived of life, liberty, or property without due process of law."

3. Treaty of Friendship, Commerce, and Navigation Between the United States and Liberia dated August 8, 1938, 54 Stat. 1739, Articles XIV, XV:

"ARTICLE XIV

The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessel and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public func-

tionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels."

"ARTICLE XV

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

4. Title 22 of the Liberian Code of Laws:

SECTION 2

"Liberian Law to Govern Matters Affecting Economy of Liberian Flag Ships.—All matters affecting the economy of Liberian Flag ships, including labour relations, shall be governed by the laws of Liberia. (Eff. Apr. 11, 1962)."

SECTION 30

"Adoption of General American Maritime Law.—Insofar as it does not conflict with any other provisions of this Title, the non-statutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia. Prior legislation: Lib. Mar. Code, t.IX."

SECTION 356

"Provisions Prohibited in Labor Contracts.—It shall be unlawful for any employer or employer organization or labor organization to attempt to bargain for, or to enter into, any labor contract containing any provision which is violative of the laws of the Republic of Liberia or which prescribes terms or conditions of employment less favorable to seamen than those set forth in this Chapter or which discriminates as to terms and conditions of employment on the basis of race, color or creed. (Eff. Aug. 18, 1964)."

STATEMENT OF THE CASE.

This personal injury action was brought by a seaman against his employer, Hunter Shipping Company, S. A., for the recovery of damages allegedly caused by his employer's negligence and/or its vessel's unseaworthiness. Claim is also being made on behalf of the seaman for maintenance and cure. The basis for federal jurisdiction in the United States District Court for the Eastern District of Pennsylvania was the admiralty or maritime nature of the claim.

Petitioner, Stamatakos, claims that on September 7, 1966, he was seriously injured while performing his first day's duties as Chief Steward aboard the Hunter Shipping Company's vessel, SS "Michael L", which was located in New York harbor, when several boxes in the ship's storeroom fell from unguarded shelves and struck his head (130a).[1] Stamatakos, a Greek citizen at the time of his accident, had signed an employment contract in Piraeus, Greece, on July 19, 1966, with Nereus Shipping, S. A. as agents of the SS "Faros", a Liberian-flag vessel owned by Mace Shipping Company, a Panamanian corporation whose stock was not owned by the individual who owned Hunter's stock (99a, 129a-130a). Stamatakos' employment contract with Mace Shipping Company provided, inter alia:

> "The wages during active service and in case illness or injury as well as all other terms of work shall be those specified in the Greek Collective Agreement and the Greek Law." (103a).

Stamatakos was transported to the United States to join the SS "Faros", but when he arrived at Norfolk, Virginia, she was not available (130a), and he was then orally offered employment as Chief Steward aboard the SS "Michael L" by representatives of Hunter (101a).

1. Appendix to the Brief filed in the Court of Appeals.

Stamatakos orally accepted this employment offer (130a), but he never entered into a written employment contract with the respondent (101a). Subsequent to his injuries, Stamatakos was hospitalized in the United States for three weeks, and then was returned to Greece (130a), where he received out-patient and in-patient treatment in Greek hospitals until May, 1967 (130a).

On September 9, 1968 he returned to the United States as a permanent resident (130a). He intends to become a United States citizen (93a). On August 17, 1969 Stamatakos' wife and two children entered the United States and have continuously resided here since their arrival (93a). Stamatakos has been employed as a dishwasher in a New York City restaurant since entering the United States (Stamatakos dep. pp. 8-9). He has continued under the care of United States doctors (Stamatakos dep., 50 et seq.).

The SS "Michael L" was constructed in the United States by Bethlehem Sparrows Point Shipyard, Inc. pursuant to Maritime Administration contract No. MA-631, as amended (127a). The original buyer was a Panamanian corporation, San Andres Compania Naviera, S. A., the principal stockholders of which were American citizens, Kostas Lemos and his sister Catherine Zoullas (127a). San Andres registered the vessel in Liberia and took delivery of the SS "Michael L" in 1953 with the approval of and subject to the control of the United States Department of Commerce (127a). Triton Shipping, Inc., a New York corporation, became and remained the agent of the SS "Michael L" (127a).

On July 11, 1962 the Maritime Administration approved the transfer of ownership of the SS "Michael L" to Hunter Shipping Company, S. A. conditioned upon its acceptance of the contract No. MA-631 (127a). Hunter is a Panamanian corporation which was the parent company

of San Andres, U. S. Department of Commerce document, Certificate Board of Directors Resolution attached to MA-631 (127a, 19a). The District Court found that at all material times Hunter's stock was owned by a Greek citizen who resided in England (127a-128a).

After the transfer of the SS "Michael L" to Hunter, Triton Shipping, Inc. continued to act as agent in the United states for Hunter's only vessel pursuant to an agreement with Nereus Shipping, a Greek corporation, who became the "operating manager" for Hunter (128a, 131a).

On May 29, 1964 Triton, on behalf of Hunter, entered into a western hemisphere tanker voyage charter party for the SS "Michael L" with Metropolitan Petroleum Ltd., a division of Pittston Company (128a). The charter contract was executed in New York (68a, 74a). Payment for the vessel's service was required to be made by Metropolitan in New York in United States currency (129a). The charter obligated the SS "Michael L" to sail in the western hemisphere until 1968 and to make calls at American ports (68a, 69a, 76a, 64a-66a). During the time period between May 29, 1964 and September 7, 1966 the SS "Michael L" traded regularly between United States ports and other western hemisphere ports (128a).

Plaintiff's alleged accident occurred while the vessel was in New York harbor pursuant to Hunter's charter agreement with Metropolitan (129a).

The parties stipulated that the District Court determine, on the basis of the facts of record as of November 29, 1971, the national substantive law to be applied at the trial (107a).

Petitioner contended that either United States statutory and non-statutory maritime law governed the action or that the law of the flag, Liberia which adopts the non-statutory maritime law of the United States, controlled.

The respondent contended that Greek law, with its more limited measure of damages and stricter proof of liability controlled the action.

On January 18, 1972, the District Court made findings of fact and entered an Opinion and Order that ". . . the law of Greece will be applied in the trial and determination of this case on the question of liability and measure of damages." (A18). On January 31, 1972, the District Court denied Stamatakos' motions for withdrawal of that Order, a reconsideration of that Order, and to amend the findings of fact (A-7).

On February 2, 1973, the Court of Appeals dismissed petitioner's initial appeal as premature (A6). On February 16, 1973 the District Court again denied, without reason, petitioner's second motion for reconsideration (A5). On March 28, 1973 the District Court entered judgment under Greek law (A4).

On January 18, 1974, the United States Court of Appeals for the Third Circuit, without opinion, affirmed the District Court's judgment (A2-A3). No reasons were given to the petitioner as to why the case was decided in such a summary fashion and without a written opinion. Furthermore, there was no notice to the petitioner from the Court of Appeals as to the standards and criteria applied in its determination that no opinion was necessary. On February 12, 1974, the Court of Appeals denied a rehearing to the petitioner, again, without rendering an opinion or giving notice to the petitioner of the reasons why petitioner's case did not warrant an opinion from the Court.

This Petition for Certiorari seeks a review of both the holding of the Court of Appeals and the procedures used by the Court of Appeals in reaching that holding without opinion.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals' Judgment Order Is in Conflict With the Supreme Court's Decision in Lauritzen v. Larsen, 352 U. S. 571 (1952).

In *Lauritzen v. Larsen,* 345 U. S. 571 (1952), the Supreme Court set forth the doctrine that the law of the flag is of cardinal importance and should be applied in cases such as the case at bar, unless some "heavy counterweight" appears in favor of some other nation's law. See also: *Romero v. International Terminal Operating Co. et al.,* 358 U. S. 354 (1959); *Hellenic Lines, Ltd. v. Rhoditis,* 398 U. S. 306 (1970). None was found by the Courts below.

The District Court erroneously rejected the law of the ship's flag, Liberia, to govern this action. This rejection was based upon the District Court's misconception that petitioner was not making claim under Liberian law (A14-A15). On two occasions prior to the entry of judgment under Greek law, petitioner requested the District Court to reconsider its rejection of Liberian law since he was basing his claim, in the alternative, under it. These requests were denied without any finding, discussion, or explanation of the "heavy counterweight" which justified the rejection of the law of the flag. The Court of Appeals for the Third Circuit, by its summary affirmance without opinion, in effect adopted the opinion of the District Court.

Furthermore, the misconception of petitioner's position by the District Court and, by its silence, the Court of Appeals, makes the record in this case incomplete as a significant issue has not been discussed. *Taylor v. McKeithan,* 407 U. S. 191 (1972). Moreover, as will be shown, the summary procedure followed by the Court of Appeals further compounded the wrong done to the petitioner.

The fact that Liberian law, the flag of the flag, was not chosen as the proper choice of law results in a direct conflict with *Lauritzen v. Larsen, supra.* Also see: *Perdikouris v. SS Olympos,* 196 F. Supp. 849, 854, 855 (E. D. Va. 1961), where the Court held in deciding a choice of law issue in a maritime tort case which did not involve American substantive law:

> "To permit the shipowner to avoid the consequences of his 'flag of convenience' by resorting to the laws of the country where the ultimate control rests would do violence to the legal system. It would create a haphazard situation whereby there would be no controlling law. . . . The doctrine invoking the flag of convenience was essentially for the benefit of an aggrieved party seeking relief in a forum maintaining substantial contacts with the vessel of a foreign flag. The fact that the flag may be illusory does not destroy the rights of an aggrieved party requesting the applicability of the law of that flag. Nor does it follow that courts of this country should automatically apply the law of the nation where the ultimate control and ownership rests. The aggrieved party most assuredly can proceed in Panama where the owner is incorporated. He could proceed in rem against the vessel in Liberia, if the vessel ever visited that country which is highly unlikely. With the consent of the flag owners, he could undoubtedly proceed in personam in Greece. If the contacts with the United States are substantial and the flag is illusory, the aggrieved party may look to the laws of this country to the extent of his right to recover for injury. We conclude, therefore, that an aggrieved party may, at his election, look to the law of the flag, and that the parties creating the illusory flag cannot insist upon the application of the law of the

country where the ultimate control and ownership rests. This is properly one of the burdens imposed upon those who, for reasons of their own, seek an illusory flag and a corporate entity which is wholly unrelated to the country of ultimate control and ownership."

A substantial federal question is thus presented in the area of choice of maritime tort law as a conflict has resulted between the Court of Appeals for the Third Circuit and the United States Supreme Court. The Supreme Court, therefore, should exercise its jurisdiction over this case to resolve the conflict. *Braen v. Pfeifer Transportation Co.*, 361 U. S. 129, 130 (1959); *Wilkinson v. United States*, 365 U. S. 399, 401 (1961).

2. The Court of Appeals' Judgment Order Is in Conflict With the Letter and Spirit of the Treaty Between the United States and Liberia.

The order of the Court of Appeals for the Third Circuit, affirming the District Court's choice of Greek law to govern this action violates the letter and the spirit of the reciprocity provisions, Article XIV, and the nationality provision, Article XV, of the Treaty of Friendship, Commerce, and Navigation Between the United States and Liberia dated August 8, 1938, 54 Stat. 1739 which provide:

"The merchant or other private vessels . . . of one of the . . . Parties . . . in all respects and unconditionally (shall) be accorded the same treatment as the vessel . . . of that Party." Article XIV.

and,

"Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the terri-

torial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown." Article XV.

Since American Courts must apply American law to maritime torts which occur aboard American flag vessels, the Treaty obligates American Courts to apply Liberian law to maritime torts which occur aboard Liberian flag vessels. Sections 2, 30, and 356 of Title 22 of the Liberian Code provide, inter alia, that Liberian law shall govern all internal matters aboard a Liberian flag vessel and adopts the non-statutory maritime law of the United States.

Thus, the integrity of both the Treaty and Liberian law has been impaired by the Court of Appeals' affirmance of Greek law to govern petitioner's case. The respondent chose the Liberian flag and now, with the aid of the American Courts, has cast off its duties and obligations mandated under the flag. This flaunting of Liberian law is contrary to the reciprocity and nationality provisions in the Treaty. In the interest of this country's international treaty obligations with Liberia, the Order of the Court of Appeals for the Third Circuit should be overturned.

Accordingly, the Supreme Court should exercise its jurisdiction over this case to resolve the conflict between the Court of Appeals' Order and the treaty obligations undertaken by the United States with Liberia to apply Liberian law to internal matters aboard Liberian flag vessels. U. S. Constitution, Article VI, § 2; *Ware v. Hylton*, 3 U. S. 199 (1796); *The Peggy*, 5 U. S. 103 (1801); *Maximov v. U. S.*, 373 U. S. 49 (1963).

3. The Supreme Court Should Grant Certiorari to Determine Whether the Courts of Appeals Are Constitutionally Required or Should Be Required Under the Supreme Court's Supervisory Powers Over the Federal Court System to Give Prior Public Notice of Standards and Criteria Used by the Courts of Appeals When They Affirm a Judgment Without a Written Opinion.

A resident alien is entitled to the same constitutional protection of due process as is accorded American citizens. *Hellenic Lines, Ltd. v. Rhoditis,* 398 U. S. 306 (1970); *Galvan v. Press,* 347 U. S. 522 (1954). Notice is an essential element of due process. Basic fairness which spawns the notice requirement also mandates notice of rules and criteria used in judicial decision making. *Powell v. Alabama,* 287 U. S. 45 (1932).

Thus, the Federal Rules of Appellate Procedure were promulgated by the Supreme Court on December 4, 1967 to become effective July 1, 1968. 9 Moores Federal Practice, § 3. See: 28 U. S. C. § 2072.

The Federal Rules of Appellate Procedure, however, are silent on the matter of notice and standards in deciding an appeal without a written opinion. This matter has been left to each Circuit for determination.

The Third Circuit decided the case at bar without a written opinion on January 18, 1974. On and before that date, the Third Circuit had not given public notice of the standards and criteria, if any, it utilized in deciding an appeal without a written opinion. When petitioner's appeal was decided, he was not given any explanation or notice of which standards, if any, his appeal ran afoul so as to not warrant a judicial opinion.

On April 8, 1974, for the first time, Chief Judge Seitz of the United States Court of Appeals for the Third Circuit, publicly announced in The Legal Intelligencer, an offi-

cial vehicle for information from that Court to the bar, the existence of Internal Operating Procedures (IOP) for the Third Circuit. The announced effective date for the IOP was some three months earlier on January 1, 1974 with a revision on March 1, 1974. The IOP contains, inter alia, standards regarding the writing of judicial opinions. However, as to petitioner and other litigants whose appeals were decided prior to April 8, 1974, who had no prior notice, these standards amounted to an ex post facto promulgation. Moreover, it is evident that the Third Circuit had been following summary procedures without public announced standards prior to January 1, 1974. See: IOP D4(b) which contains a form of judgment order which is the exact one entered by the Court in this case on February 2, 1973 (A6).

Petitioner contends that even though the United States Court of Appeals for the Third Circuit now does have articulated standards, this ex post facto promulgation does not aid him in determining just why, in this case, no opinion was rendered. The very act of promulgation by the Court of Appeals, demonstrates the recognized need for making the litigant aware of such matters.

Moreover, even under the Third Circuit's IOP, petitioner's grievance is not remedied. The present form of a judgment order under the IOP and as utilized in petitioner's case still is defective since it makes the litigant guess as to the reasons for the Court deciding his case without written opinion. Petitioner does not know which criteria were found to apply to his appeal, and as a result is left uninformed as to why his appeal did not warrant a written opinion by the Court of Appeals.

By way of contrast to the "no-notice" procedures used in the Third Circuit at the time petitioner's case was decided, the Fifth Circuit has set forth standards and informs the litigant in each case why his appeal does not warrant a

written opinion. U. S. Ct. of App. 5th Cir. Rule 21, 28 U. S. C.

In addition, in the first case disposed of under this procedure, the Fifth Circuit Court of Appeals gave notice to all future litigants by writing a lengthy opinion in that case which explained how the procedure would go into effect and how it would be applied. *National Labor Relations Board v. Amalgamated Workers of America,* 430 F. 2d 966 (5th Cir. 1970).

The court also went on to discuss the important function of writing opinions, specifying at least two "highly significant" purposes: (1) writing opinions eliminates arbitrary action and the temptation to render ill-considered decisions and (2) written opinions themselves are a basis for the growth of judge-made law and allows for predicting future actions and gives an important guide to prospective litigants in their future conduct. Written opinions further accountability to the public, as well. The factors going into the determination of when the process of writing opinions will not be utilized in favor of a "short cut method" are essential to the preservation of fundamental fairness in decision-making. The decision that no opinion is necessary in a particular case is, in many cases, as important as the articulated statement of reasons itself.

Thus, by a two-pronged method at the inception of the summary disposition idea, prospective litigants as well as those in the case itself were given notice by both publication of the rule itself and an explanation in a judicial decision. Furthermore, in subsequent cases after *N. L. R. B. v. Amalgamated Clothing, supra,* a citation to that case was included in every case disposed of in the summary method, so litigants who were unaware of that case were informed.

In contrast to the scrupulous regard for notice to litigants which the Fifth Circuit has demonstrated, the Third Circuit at the time of the decision in the case at bar,

gave no notice as to any standards they considered, even if the standards were *sub silentio*. This lack of notice of standards constitutes a serious question of the violation of due process which the Supreme Court should now review.

In a democratic society, the court system should be accountable to the people. Accountability to the public is necessary for compliance with fundamental fairness within the meaning of the due process clause of the fifth amendment. It is contended that the absence of notice by way of judicial explanation to the petitioner constitutes an abuse of judicial discretion regarding the writing of opinions. If no written opinion is deemed to be necessary, then, at a minimum, the reasons for the summary procedure's use should have been explained to the petitioner in the order itself, or in some other manner such as published Circuit Rules.

The judicial system, in many disputes, constitutes the only available forum for relief. A litigant as well as the Supreme Court deserve to know why a case did not merit an opinion from the Court of Appeals, especially, where, as in the instant case, the record is incomplete due to a lack of discussion by either the District Court or the Court of Appeals of an important and crucial issue (here, the law of Liberia was not discussed as a viable choice of law, due to the erroneous belief by the District Court that petitioner was not advocating the law of Liberia as a proper choice of law). *Taylor v. McKeithan*, 407 U. S. 191 (1972). Where the decisions in the courts below are founded on a misconception of petitioner's position, the Supreme Court's review and opinion are warranted. *Wycoff Co. v. Public Service Commission of Utah*, 195 F.2d 252, rev'd 344 U. S. 237 (1952).

In these days of increased judicial activity and heavy case loads, especially in the federal appellate courts, all Courts of Appeals have begun to decide a substantial num-

ber of appeals without a written opinion. During the fiscal year 1973, of the 13,721 cases (after consolidations) terminated by the Courts of Appeals, 6,990 were terminated without a written opinion. Adm. Off of U. S. Courts, Annual Report (1973) p. II-12.

On January 18, 1974, when the Third Circuit decided petitioner's case without a written opinion, seven of the eleven circuit courts had publicly promulgated rules containing the standards and procedures followed when a case is decided without a written opinion. The District of Columbia, Second, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits had announced such rules. The First, Third, Fourth, and Eighth Circuits had not. U. S. Court of Appeals Rules, 28 U. S. C.

The effect of the lack of public standards such as existed in the Third Circuit, creates the potential for concealed decision making, arbitrary decision making, and abuses of judicial discretion. Under standardless or secret basis for decision making, all the Court of Appeals need tell the litigant is that his case was "affirmed". This, petitioner contends, is not in keeping with the traditional role of openness in the courts of this nation. It is not in keeping with the Courts' need to reinforce public confidence in our legal system in this era of Watergate.

Moreover, the congestion in the federal courts and the methods, such as the summary affirmance, used to combat the congestion, threatens the effectiveness of judicial review, and the pressure of time may create a tendency to give greater deference to the primary decision-maker. The Courts of Appeals, therefore, should be required to explain its actions either by a written decision or by stating its reasons for not issuing a decision with opinion, so as to withstand public inspection and remain accountable to the public. See: Carrington, *Crowded Dockets and the*

Courts of Appeals: The Threat to the Function of Review and the National Law, 82 Harv. L. Rev. 542 (1969). This requirement is especially essential in view of litigants, such as petitioner, limited access to Supreme Court review and the ever increasing case load of the Supreme Court itself. See: Cannon, *Administrative Change and the Supreme Court,* Judicature, Vol. 57 No. 8 (March, 1974).

It is granted that the Court of Appeals for the Third Circuit has discretion in such matters as the writing of judicial opinions. It is not contended that the Supreme Court should require the Courts of Appeals to render written opinions in every case before it. However, some measure of accountability to the litigant is necessary to fundamental fairness, the appearance of justice, and the exercise of sound judicial discretion. *Communist Party v. Subversive Activities Control Board,* 351 U. S. 115 (1956); *Mesarosh v. U. S.,* 352 U. S. 1 (1956).

Hiding behind the facade of "judicial efficiency" has, in the case at bar, deprived petitioner of a much more important goal than efficiency; his rights under the due process clause of the fifth amendment of the United States Constitution.

Although uniformity among the federal circuits in all their local rules is not mandated, F. R. A. P. 47, it is contended that in this matter of whether or not to write a judicial opinion in a particular case, prior public announced standards should be promulgated by the Circuit Courts. Incongruities in this practice should not be allowed.

Judicial opinion-writing is the heart of the process of justice, and, at a minimum, as a matter of the Supreme Court's supervisory powers, the Court should insure that litigants obtain the right to know why they are not entitled to guidance in the form of an opinion in their case. *Communist Party of the United States of America v. Subversive Activities Control Board,* 351 U. S. 115 (1956); *Mesarosh*

v. United States of America, 352 U. S. 1 (1956); *Brown v. U. S.*, 356 U. S. 148 (1958).

Petitioner's case is an appropriate one for the Supreme Court to set up proper guide lines for the Courts of Appeals as to the necessity of prior public notice of standards in connection with appellate decision making without a written opinion. Accordingly, the Supreme Court should exercise its jurisdiction over this case.

CONCLUSION.

For all of the above reasons, a writ of certiorari should issue to review the Order without opinion of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

MORRIS M. SHUSTER,
NEIL J. DILLOFF,
Attorneys for Petitioner.

Appendix.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 73-1397

ANASTASSIOS STAMATAKOS,
Appellant

v.

HUNTER SHIPPING COMPANY S. A.

SUR PETITION FOR REHEARING.

Present: SEITZ, *Chief Judge,* VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS and GARTH, *Circuit Judges*

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By THE COURT,

ARLIN M. ADAMS,
Circuit Judge.

Dated: February 12, 1974

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 73-1397

ANASTASSIOS STAMATAKOS,
Appellant

v.

HUNTER SHIPPING COMPANY S. A.

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C. A. No. 68-1094

Argued January 8, 1974

Before: ADAMS, HUNTER and WEIS, *Circuit Judges*

MORRIS M. SHUSTER,
Philadelphia, Pa. 19107
Attorney for Appellant

WILLIAM E. RAPP,
Philadelphia, Pa. 19102
Attorney for Appellee.

JUDGMENT ORDER.

After careful consideration of the contentions raised by appellant, particularly that the district court erred in its choice of law governing this action, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs to be taxed to appellant.

By THE COURT,

ARLIN M. ADAMS,
Circuit Judge.

Attest:
THOMAS F. QUINN,
Clerk.

DATED: January 18, 1974

Certified as a true copy and issued in lieu of a formal mandate on February 20, 1974.

Test: THOMAS F. QUINN,
Clerk, U. S. Court of Appeals.

Costs taxed in favor of appellee as follows:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 68-1094.

ANASTASSIOS STAMATAKOS

v.

HUNTER SHIPPING CO., S. A.

ORDER.

AND Now, to wit, this 28th day of March, 1973, the parties having entered into a stipulation as to the governing Greek law and its application to the facts of this case, it is hereby

ORDERED that judgment be entered for the plaintiff and against the defendant in the sum of Ten Thousand Dollars ($10,000.00).

DONALD W. VANARTSDALEN, *J.*

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 68-1094.

ANASTASSIOS STAMATKOS

v.

HUNTER SHIPPING CO., S. A.

ORDER.

AND Now, this 16th day of February, 1973, after due consideration of the briefs filed by the parties in the Third Circuit Court of Appeals concerning the application of Greek or American law, the motion for reconsideration of the Order of January 18, 1972, is DENIED.

BY THE COURT:

DONALD W. VANARTSDALEN,

J.

February 16, 1973

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 72-1194

ANASTASSIOS STAMATAKOS,
Appellant,

v.

HUNTER SHIPPING COMPANY S. A.

(Eastern Dist. of Pa.—Civil Action No. 68-1094)
Submitted Under Third Circuit Rule 12(6)
February 2, 1973
Before SEITZ, *Chief Judge,* ALDISERT, *Circuit Judge* and FISHER, *District Judge.*

JUDGMENT ORDER.

After consideration of all contentions raised by the appellant and finding the district court's determination concerning the choice of law is not appealable under 28 U. S. C. § 1292(a)(3) and *Cummings v. Redeeriaktieb Transatlantic,* 242 F. 2d 275 (3d Cir. 1957), it is

ORDERED AND ADJUDGED that the appeal in this case is dismissed.

Costs taxed against appellant.

By THE COURT,

SEITZ,
Chief Judge.

Attest: THOMAS F. QUINN,
Clerk.

DATED: February 2, 1973

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 68-1094.

ANASTASSIOS STAMATAKOS

v.

HUNTER SHIPPING CO., S. A.

MEMORANDUM AND ORDER.

VANARTSDALEN, *J.* JANUARY 31, 1972

Pursuant to a stipulation between the parties, the choice of law problem in this case was presented to the court for pretrial determination. The issue was briefed and argued and my opinion and order of January 18, 1972 determined that Greek law was applicable. Plaintiff has moved for a withdrawal of that order, a reconsideration of the order and amended findings of fact. The proposed findings of fact were submitted by the parties prior to the opinion and order. The request for amended findings does not suggest any facts that had not been previously considered. The motions will, therefore, be denied.

ORDER.

AND NOW, this 31st day of January, 1972, plaintiff's motion for amended findings of fact is DENIED. Plaintiff's

motion for reconsideration is DENIED. Plaintiff's motion for the withdrawal of the opinion and order dated January 18, 1972, is DENIED.

BY THE COURT:

DONALD W. VANARTSDALEN,

J.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 68-1094.

ANASTASSIOS STAMATAKOS

v.

HUNTER SHIPPING CO. S. A.

MEMORANDUM OPINION AND ORDER.

VAN ARTSDALEN, *J.* January 18, 1972

The law of one of several nations will control this case. United States, Panama, Liberia and Greece all have contacts such as to arguably make their respective laws controlling. Plaintiff contends that United States law and the Jones Act apply. Defendant contends that Greek law, with its much more limited measure of damages and stricter proof of liability must control. The parties stipulated that the court determine, on the basis of the present record, the national law to be applied at the trial.

Plaintiff, a Greek citizen and resident now seeking United States citizenship as an immigrant, was injured in New York harbor aboard a ship built in the United States under the Maritime Administration, owned by a Panamanian corporation, flying the Liberian flag, the stock of which corporation was wholly owned by a Greek citizen. Plaintiff had signed a contract of employment in Greece,

providing for Greek law to prevail, but his actual employment aboard the particular vessel was orally negotiated in the United States. This is a brief summary of the facts more fully hereafter detailed.

FINDINGS OF FACT.

1. The SS MICHAEL L was constructed in the United States by Bethlehem Sparrows Point Shipyard, Inc., pursuant to Maritime Administration Contract No. MA-631, as amended.

2. The original buyer was a Panamanian corporation, San Andres Compania Naviera, S. A., the principal stockholders of which were American citizens, Kostas Lemos and his sister, Catherine Zoullas (U. S. Department of Commerce letter, June 26, 1962) (Xistris Dep. 19, 21-22).

3. San Andres registered the vessel in Liberia.

4. The United States Department of Commerce agreed to permit San Andres to take delivery of the SS MICHAEL L in 1953 when San Andres agreed to subject the vessel to the control of the United States Department of Commerce, Contract No. MA-631.

5. Triton Shipping Company, Inc., a New York corporation, became the agent for the SS MICHAEL L soon after the vessel was delivered to San Andres (Xistris Dep. p. 21).

6. On July 11, 1962 the Maritime Administration approved the transfer of ownership of the SS MICHAEL L to defendant, Hunter Shipping Co., S. A., conditioned upon its acceptance of Contract No. MA-631 (U. S. Department of Commerce document, transfer order No. MAF-178).

7. Hunter Shipping Co., S. A., is a Panamanian corporation.

8. The stock of the defendant corporation was made to bearer and the sole stockholder was at all times material to this cause of action a Greek citizen who resides in England (Tsakos' affidavit dated May 8, 1969).

9. All of the officers of the defendant corporation were at all times material to this cause of action citizens and residents of Greece (Tsakos' affidavit dated May 8, 1969).

10. Pursuant to MA-631, defendant appointed Albatross Shipping Agency, a New York corporation, as resident agent to accept service of process against Hunter in the United States (U. S. Department of Commerce document, "Appointment of Resident Agent").

11. After the transfer of the vessel to Hunter, Triton Shipping Company, Inc., continued to act as agent for the vessel (Xistris Dep. p. 21).

12. After the transfer of the vessel to Hunter, Triton Shipping Company, Inc., acted as agent for the vessel in the United States pursuant to an agreement between Triton and Nereus Shipping, a Greek corporation (Xistris Dep., Exhibits P-4, 5, 6).

13. On May 29, 1964, on behalf of Hunter, Triton entered into western hemisphere tanker voyage charter party for the SS MICHAEL L with Metropolitan Petroleum, Ltd., a division of Pittston Company (Xistris Dep., p. 31, Exhibit P-9).

14. During the time period May 29, 1964 to September 7, 1966, the SS MICHAEL L traded regularly between the United States and other western hemisphere ports (Xistris Dep., Exhibit P-7).

15. From May 29, 1964 to December 31, 1964 the vessel engaged in seven voyages, six of which included a United States port (Xistris Dep., Exhibit P-7).

16. In 1965 the vessel SS MICHAEL L engaged in twelve voyages, eleven of which included a United States port (Xistris Dep., Exhibit P-7).

17. In 1966, prior to September 6, 1966, the vessel engaged in nine voyages, all of which included ports in the United States (Xistris Dep., Exhibit P-7).

18. Payment for the vessel's service was made by Metropolitan in New York in United States currency (Xistris Dep., Exhibit P-9).

19. Plaintiff's alleged injuries occurred on September 7, 1966 while the vessel was in New York harbor pursuant to its charter agreement with Metropolitan (Xistris Dep., Exhibit P-7).

20. Plaintiff was a Greek citizen at the time of the alleged injuries.

21. Plaintiff signed an employment contract in Piraeus, Greece, on July 19, 1966 between himself and Nereus Shipping S. A. as agents of the SS FAROS (See Employment Agreement attached to Tsakos' affidavit of March 17, 1971).

22. By that contract, plaintiff agreed to the applicability of Greek Law and the Greek Collective Agreement in the event of "illness or injury".

23. Nereus Shipping S. A. was the operating manager of the SS MICHAEL L as well as the SS FAROS (Tsakos' affidavit of March 17, 1971).

24. The SS FAROS was a Liberian flag vessel, owned by a Panamanian corporation, the officers of which Panamanian corporation were the same as those of the defendant corporation (Tsakos' affidavit of March 17, 1971).

25. Plaintiff embarked on the S/S FRIXOS, also operated by Nereus Shipping S. A., in Holland for transportation to the United States (Plaintiff's deposition pp. 17-18).

26. When he arrived in Norfolk, Virginia, on the S/S FRIXOS, the SS FAROS was not available for his employment and he orally agreed to become employed on the SS MICHAEL L in the same capacity he would have been employed on the SS FAROS (Plaintiff's deposition pp. 17-18 and Tsakos' affidavit of March 17, 1971).

27. Plaintiff alleges that on September 7, 1966 several boxes in the ship's storeroom fell from unguarded shelves and struck plaintiff's head as he was performing his first day's duties as Chief Steward aboard the SS MICHAEL L (Stamatakos Dep., p. 38).

28. Plaintiff was a member of the Greek Panhellenic Seamen's Federation on the date in question.

29. Subsequent to the alleged injuries, plaintiff was treated as an in-patient in Bayonne Hospital, United States, from September 7, 1966 to September 28, 1966 when he was repatriated to his residence and domicile in Greece.

30. Plaintiff received outpatient and in-patient treatment from Greek hospitals until May, 1967.

31. On September 9, 1968, plaintiff returned to the United States as a permanent resident and an immigrant (Stamatakos Dep., p. 5).

32. Nereus Shipping S. A. is a Greek corporation having its only office in Piraeus, Greece. It has no offices in the United States (See Defendant's Answers to Plaintiff's Interrogatories 36(b) through (e)).

DISCUSSION.

The case of *Lauritzen v. Larsen*, 345 U. S. 571 (1952), set forth the following seven tests to be applied in determining the controlling law in seamen's actions: (1) place

of the wrongful act, (2) law of the flag, (3) allegiance or domicile of the injured, (4) allegiance of the defendant shipowner, (5) place of contract, (6) inaccessibility of foreign forum, (7) law of the forum. Subsequently, the court in *Hellenic Lines v. Rhoditis,* 398 U. S. 306 (1970), reaffirmed those points but note that:

> "The significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction. Moreover, the list of seven factors in *Lauritzen* was not intended as exhaustive. As held in *Pavlou v. Ocean Traders Marine Corp.,* 211 F. Supp. 320, 325, and approved by the [Third Circuit] Court of Appeals in the present case, 412 F. 2d [919] at 923 n. 7, the shipowner's *base of operations* is another factor of importance in determining whether the Jones Act is applicable; and there well may be others." *Id.* at 309.

Lauritzen, Hellenic Lines and *Pavlou* all dealt with whether or not the Jones Act was applicable, which is, of course, one of the problems here involved.

1. The place of the wrongful act test would apply United States law, as the injury occurred in New York harbor. This test is of "limited application to shipboard torts." *Lauritzen,* at 583.

2. The law of the flag was held in Lauritzen to be "perhaps the most venerable and universal rule." *Lauritzen* at 584. Considerations of the principle of the law of the flag are of such weight that they must prevail unless some heavy counterweight appears. The ship aboard which the injury occurred was Liberian. Neither party contends that Liberian law should prevail. Utilization by non-Liberian corporations and non-Liberian nationals of the

Liberian flag as a flag of convenience is well known. The realities of this case are such that the "law of the flag" should not prevail.

3. The "allegiance of the domicile of the injured" is important. At the time of the injury, and when this action was filed, plaintiff was a Greek citizen and a Greek resident. Subsequent to filing action, plaintiff entered United States as an immigrant. Although it may be argued that a plaintiff should not be able to improve his position subsequent to the injury and subsequent to filing suit, "each nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support." *Lauritzen* at 586. As noted in *Hellenic Lines,* at 309, n. 5, once an alien lawfully enters and resides in the United States, he acquires many rights under the Constitution. In any event, the legitimate interest of Greece in the welfare of plaintiff is undoubtedly diminished by his immigrant status in the United States, while the interest of the United States has very substantially increased. If the test is the interest of a nation in its nationals and residents, the changed status of plaintiff subsequent to the injury might well and logically alter the balance in this case. A citizen of one state of the United States may, after an injury, remove his domicile and residence to another state and thereby enable the federal courts to acquire jurisdiction on "diversity of citizenship".

4. Allegiance of the defendant shipowner is in this case clearly that of Greece, even though the corporate shipowner is a Panamanian corporation. Neither party seeks Panamanian law to be invoked. The stock is all owned by a Greek citizen who resides in England. The true owner of the ship owes his allegiance to Greece, and Greece has a legitimate interest in protecting such ownership, but

not nearly as strong an interest as would have prevailed had the owner seen fit to utilize a Greek corporation and fly the flag of Greece.

5. Place of contract. Plaintiff signed a contract of employment in Greece to serve aboard the SS FAROS, which contract provided that Greek law should apply. However, when plaintiff arrived in the United States instead of boarding the SS FAROS, plaintiff boarded the SS MICHAEL L pursuant to "oral instructions," which apparently were negotiated in the United States. This factor appears to weigh in favor of Greek law.

6. Inaccessibility of foreign forum. Plaintiff formerly was a Greek citizen and resident. Some of his hospitalization took place in Greece. There is no doubt that the courts of Greece would be open to plaintiff. However, this is not a problem of forum non conveniens. That matter was disposed of against defendant in its motion to dismiss.

7. Law of the forum. "Jurisdiction of maritime cases in all countries is so wide and the nature of its subject matters so far-flung that there would be no justification for altering the law of a controversy just because local jurisdiction of the parties is obtainable." *Lauritzen* at 591. Of considerable significance, however, as pointed out in *Hellenic Lines,* is that most of the shipping of the vessel either originated or terminated in the United States, making substantial contacts with this nation and its shipping economy.

Thus, on balancing the factors we find that the wrongful act occurred in United States territorial waters, but aboard the foreign vessel. Both the flag and corporate shipowner's nationality were those of convenience, and help very little in resolving the issue. The true owner of the ship was of Greek nationality residing in England. The plaintiff was a Greek, who since filing this action has be-

come an immigrant of the United States. The place of contract was United States, by an oral agreement that largely adopted a written contract executed in Greece and which provided for application of Greek law. The action has been brought in this district, but there is nothing to prevent the application of Greek law. These factors all seem to weigh about equally as between the two nations.

Although the actual owner of the ship appears to be a Greek citizen, the United States does retain substantial contacts with, and interest in, the vessel. The ship was originally constructed by the United States Maritime Administration. The registry of the ship cannot be transferred without approval of the Maritime Administration and there were other substantial controls all guaranteed by security in the sum of $100,000.00. A local agent was appointed for purposes of service of process. The vessel was chartered in New York to Metropolitan Petroleum Ltd., a division of a United States corporation. Payment for the charter services, which was the shipping of oil to ports in the United States, was made in United States currency in New York.

Although the matter appears to be extremely close, based on the present case law, the law of Greece would appear to be more appropriately applied than United States law. For all practical purposes, the ship was a Greek ship. The crew, including plaintiff, voluntarily agreed to be subject to the laws of Greece. Where parties voluntarily agree that the law of some particular forum should prevail, in the absence of some strong overriding public interest to the contrary, such agreement should be given effect. *Lauritzen, Hellenic Lines,* and *Pavlou* indicate no overriding public interest in applying United States rather than Greek law in this case.

In reaching this decision, it is obvious that there will be presented difficult problems in determining the effect of

Greek law, but such technical problems should not control the principles determining the choice of law.

Because this decision involves applying the facts of this case to decided case law as enunciated in *Lauritzen, Hellenic Lines* and *Pavlou,* I do not believe it appropriate to certify the case for interlocutory appeal pursuant to 28 U. S. C. A. 1292(b) (1966), even though there is certainly substantial ground for difference of opinion and an immediate appeal might well materially advance the ultimate determination. A controlling question of law is not in doubt, but the application of the facts of this case to the law raises substantial ground for a difference of opinion.

ORDER.

And Now, this 18th day of January, 1972, the law of Greece will be applied in the trial and determination of this case on the question of liability and measure of damages. The Jones Act is hereby held to be inapplicable unless under the law of Greece such Act is made applicable to the facts of this case.

By THE COURT:

Donald W. VanArtsdalen,

J.